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OCT 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY


October 27, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Dear Mr. Caton

On behalf of Mt. Wilson FM Broadcasters, Inc., licensee of Station KKGO-FM, Los Angeles, California, there is herewith transmitted an original and 10 copies of its "Further Reply Comments", in the DARS Rulemaking proceeding.

Very truly yours,


Robert B. Jacobi

Enclosure

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OCT 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of

)

IB Docket No. 95-91

)

GEN Docket No. 90-357

)

RM No. 8610

Establishment of Rules and Policies for the
Digital Audio Radio Satellite Service in the
2310-2360 Mhz Frequency Band

)

PP-24

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PP-86

)

PP-87

Further Reply Comments of Mt. Wilson FM Broadcasters, Inc.

Mt. Wilson FM Broadcasters, Inc., licensee of Station KKGO-FM, Los Angeles, California (hereinafter, Mt. Wilson) has filed both Comments and Reply Comments in the above referenced proceeding.

The Reply Comments of Digital Satellite Broadcasting Corporation (hereinafter, Digital) references a menu of organizations which filed Comments, allegedly in support of DARS, the purpose of such reference obviously being to convince the Commission of "...the wide variety of organizations that support immediate licensing of the current DARS applicants" (Digital Reply Comments, Pgs.2 and 3). Included among the "wide variety" were commercial and public broadcasters; it then identified four such entities, KJAZ Satellite Radio, (hereinafter, Satellite Radio), WPFW (a non-commercial FM radio station), Native American Public Broadcasting Consortium (hereinafter, NAPBC) and Bell Broadcasting Company (hereinafter, Bell) (Digital Reply, Pg. 3 and Footnote 11).

The support of broadcasters (especially commercial) for DARS, in any significant numbers, would be noteworthy. However, even in the kindest light, the Digital pleading is, simply stated, misleading and intended to deceive the Commission.

Satellite Radio is not a broadcast station, either commercial or non-commercial. It is, in fact, a programmer which provided a jazz music format via satellite to cable systems across the United States (see Comments of Satellite Radio, appended hereto as Exhibit A).^{1/} Satellite Radio ceased operation in 1995 primarily because “The signal wasn’t coming over the public airwaves so you couldn’t get it on the car radio” (see Exhibit B, Newspaper story pertaining to demise of Satellite Radio and Exhibit A).^{2/}

Digital also references Bell as an example of another commercial broadcaster which filed Comments in support of DARS. Unlike Satellite Radio, Bell is a broadcaster. However, contrary to the Digital representation, the Bell Comments clearly and unequivocally opposed the concept of a DARS operation. Bell does, however, set forth the argument that if the FCC is determined to go forward with DARS, such service should be rendered as a common carrier and that DARS licensees “...should not be permitted to either offer their own programming or control the programming broadcast from the satellites” (Bell Comments, Paragraph 12, see Exhibit C). No reasonable reading of the Bell Comments can be construed to reflect support for the “...immediate licensing of the current DARS applicants”.

Digital also identifies NAPBC as yet another broadcaster (presumably public) which filed Comments in support of DARS. While it is correct that NAPBC filed Comments in support of DARS, NAPBC (like Satellite Radio) is not a broadcast station. NAPBC describes itself as follows:

“The NAPBC is in business to encourage the production and dissemination of quality telecommunications programs for public broadcast and educational uses by both NAPBC and general audiences....NAPBC is a national program development, librarying and distribution agency that represent a membership of public radio

^{1/} The principal of Satellite Radio, Ronald Cowan, was the principal of KJAZ, Inc., the prior licensee of radio Station KJAZ, Alameda, California. The station was sold to Z Spanish Radio Network in 1994.

^{2/} Unless otherwise regulated, DARS will be carried on car radio. Predictably, many local radio stations will suffer the same fate as Satellite Radio.

stations serving rural reservation communities in the U.S. and Alaska.” (See Comments of NAPBC, attached hereto as Exhibit D).

To recapitulate, Digital affirmatively asserts to the Commission as evidence of support, indeed “compelling” support, a “...wide variety of organizations that support immediate licensing of the current DARS applicants” (Digital Reply, Pgs.2 and 3) and, further, embellishes such assertion by specifically referencing the support of commercial and public broadcasters. Neither Satellite Radio nor NAPBC are broadcasters. Bell, the only identified commercial broadcaster, opposed DARS. The “wide support” to the extent that it incorporated commercial broadcasters is a fiction, a myth.

Ordinarily, Mt. Wilson would not file an additional pleading after the “Reply Pleading” filing date. Mt. Wilson, understands the significance of the Digital effort to convince the Commission that “... even commercial and public broadcasters” support DARS. Digital’s treatment of this matter is shameful and, indeed, undermines whatever other alleged “facts” are asserted in support of DARS.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By: 

Robert B. Jacobi
Cohn and Marks
1333 New Hampshire Ave., N.W.
Suite 600
Washington, D.C. 20036

Date: October 27, 1995

Exhibit A

Comments of KJAZ Satellite Radio



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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 31 1995

In the Matter of

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OFFICE OF SECRETARY

Establishment of Rules and Policies) IB Docket No. 95-91
for the Digital Audio Radio Satellite) GEN Docket No. 90-357
Service 2310-2360 MHz Frequency Band) RM No. 8610

COMMENTS OF KJAZ SATELLITE RADIO

KJAZ is a Non-Profit California Mutual Benefit Corporation dedicated to the furtherance and education of mainstream jazz music. Mainstream jazz is the music of Miles Davis, John Coltrane, Charley Mingus, Dave Brubeck, Jelly-Roll Morton, Charley Parker, and a multitude of others as compared with New Age or elevator jazz, which has become a populist format in almost every radio market in the country.

The mainstream jazz aficionado constitutes approximately 3-5% of the radio audience and is the highest demographic of any musical format including classical. They have the highest incomes, the most education, and are passionate about their love of the music.

Of the approximately 8,000 to 9,000 commercial radio licenses in the U.S. today, less than 40 stations program mainstream jazz. The audience is simply not large enough to support the returns necessary for the cost of a commercial license in today's marketplace. In almost all of the major markets across the country, the only place that a jazz aficionado can get access to the music are through Public Radio stations. There are approximately 300 public radio stations that program some kind of mainstream jazz; this number is shrinking, and the quality of programming is diminishing as a direct result of impending cutbacks for Public Radio.

KJAZ Radio broadcast over 92.7 FM from a San Francisco transmitter for 35 years. It was the first 24-hour-a-day commercial mainstream jazz station in the country. To my knowledge, when it went off the air in July of 1994, it was the last remaining 24-hour-a-day mainstream jazz station in the country. In an effort to keep the spirit of KJAZ alive, we formed a new Non-Profit Mutual Benefit Corporation and began broadcasting off the SATECOM I Satellite to cable systems across the country. Since radio is a numbers game, our thought was that if we could reach jazz lovers from all over the country, we could accumulate sufficient numbers to attract sponsors and advertisers to support our efforts. After nine months

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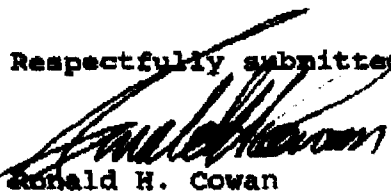
COMMENTS OF KJAZ SATELLITE RADIO (Continued - Page 2)

of broadcasting off SATECOM 1, KJAZ Satellite Radio went off the air August 14, 1995. The principal reason that our effort was unsuccessful was the inability of listeners to receive KJAZ in their cars.

Satellite delivered digital radio that can be received in the cars would make possible KJAZ-type programming that is just simply not available in today's current marketplace. If we at KJAZ have this experience, I am certain that there must be many other niche formats that are also under-served and are only economically feasible when "bundled" with listeners on a national basis.

It is for these reasons that we are urging you to license Satellite Digital Audio Radio Services immediately.

Respectfully submitted,



Ronald H. Cowan
President
KJAZ Satellite Radio
(510) 769-5101
August 23, 1995

Exhibit B

Newspaper Article from San Francisco Chronicle

KJAZ Can't Cut It on Cable, Shuts Down

BY JESSE HAMLIN

Chronicle Staff Writer

KJAZ has died — again. And this time it looks like for good.

The venerable jazz radio station, which had tried to survive on cable after going off the airwaves last August, pulled the plug yesterday at 11 a.m. The money ran out, again.

"It was a financial decision," said station manager Vester Emerson, who announced the station's demise yesterday on the air.

"The bottom line is we couldn't generate enough funding through corporate sponsorship and fund raising to keep going. We are ceasing to broadcast."

Most of the \$70,000 monthly cost of running KJAZ was paid by Ron Cowan, the beleaguered Alameda real estate developer who was forced to sell the station's FCC license

last year to pay off \$4 million in bank debts borrowed against KJAZ.

Cowan, who bought KJAZ in 1980 for \$1.4 million and sold the license for about \$6 million to Z Spanish Radio last year, reportedly poured more than \$5 million of his own money into KJAZ over the years.

"Ron has supported KJAZ for a long time," Emerson said, "and it got to the point where it was no longer possible. We were so far from breaking even it wasn't even a stretch."

Cowan could not be reached yesterday for comment.

Before the old KJAZ went silent last year, Cowan led an extraordinary public fund-raising campaign to save the beloved station, which had broadcast for 35 years; it netted an impressive \$1.3 million, but not enough to keep America's only remaining commercial

jazz-radio station on the air.

Last December, KJAZ refashioned itself into a nonprofit station and began sending its satellite signal to cable systems throughout the Bay Area, Monterey and in New York City. The station, Emerson said, was available on 127 cable outlets.

But because there is no ratings systems for cable, no one knows how many people were listening. The station's Friends of KJAZ fund-raising campaign raised about \$175,000, Emerson said, and San Francisco Federal was one of the few corporate sponsors to sign on.

To get KJAZ, listeners had to first have cable, then pay to hook up the FM service. The signal wasn't coming over the public airwaves so you couldn't get it on the car radio.

"Not being available in automobiles was a major drawback," Emerson said.

Exhibit C

Comments of Bell Broadcasting Company

**Before the
Federal Communications Commission
Washington, D.C. 20554**

DOCKET FILE COPY ORIGINAL

In the Matter of)	IS Docket No. 95-91
)	GEN Docket No. 90-357
Establishment of Rules and)	RM No. 8610
Policies for the Digital)	PP-24
Audio Radio Satellite Service)	PP-86
in the 2310-2360 MHz)	PP-87
Frequency Band)	

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SEP 14 1995

TO: The Commission

FCC MAIL ROOM

COMMENTS OF BELL BROADCASTING COMPANY

Bell Broadcasting Company ("Bell"), by its attorney, hereby respectfully submits the following comments in this proceeding:

I. Bell Broadcasting Company.

1. Bell Broadcasting Company was originally founded in 1955 by two African Americans, Haley Bell and Wendell Cox. The company was initially awarded a construction permit for an AM station, WCMB, which operates to this day serving the Black population in the vicinity of Detroit, Michigan. The company also owns an FM broadcast station, WJZZ, licensed to Detroit, as well as other AM stations situated at Frankenmuth, Michigan, and Bay City, Michigan. To this day, 100% of the stock of the company is beneficially owned by African Americans.

2. Bell is filing these comments because it is concerned with the trend towards more and more concentration of control of

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broadcasting in the hands of a few large companies. Heretofore, the FCC and the Congress have promoted a policy of diversification, i.e., it has been considered "good" to have the widest possible number of different voices for expression of ideas, through broadcasting. Recently, however, it has become fashionable, particularly in some libertarian circles, to advocate that the government abandon all efforts to diversify the voices of expression in favor of a so-called "free market" approach, in which a few large companies will be permitted to own all of the broadcast outlets in the United States. Bell believes that this notion is grievously misplaced. It is misplaced because there is not and cannot be a truly "free market" in broadcasting, so long as the market is created by the government. So long as the FCC specifies the spectrum that can be used for broadcast purposes, and so long as the FCC limits the uses to which that spectrum can be put, the market is not free; it is a creation of government. That being so, government has a responsibility not to allow the creation of monopolies or semi-monopolies.

3. This proceeding contemplates that a handful of licenses will be issued to a few large companies, who will be permitted to offer multi-channel audio broadcast services by direct transmission from satellites. Evidently, the FCC contemplates that these companies will be permitted to control the programming of all these channels. In these Comments, Bell will show that such a result is not in the public interest; that, at most, satellite owners should be required to operate as common carriers, and not to

control the programming broadcast over their facilities.

II. The Threat to Free Broadcasting.

4. In its NPRM, the FCC requests comments on the threat that DARS may pose to the conventional broadcasting industry. That threat is very real. As the NPRM points out, 6 MHz of bandwidth can be used to provide 75 channels of CD quality music programming. But the FCC does not propose to limit DARS to music. To the contrary, as pointed out at paragraph 54 of the NPRM, DARS licensees may use some of their spectrum for low data rate audio (voice). Thus, a DARS licensee might offer 60 high quality music channels and use the rest of its spectrum for, perhaps, 50 voice-quality channels. These channels could offer such popular programs as the Rush Limbaugh Show, G. Gordon Liddy, the Black Avenger, etc. By using a memory chip in the customer's receiver, local news for all fifty states could be sent and stored at regular intervals. The customer could retrieve that news, usually no more than a half hour old, by pushing a button. Other channels could carry continuous national and world news, stock market quotes, religious programs, foreign language programs, etc. A customer equipped with such a radio would have absolutely no reason to listen to his local AM or FM stations!

5. Interestingly, the FCC has the capacity to put conventional broadcasters out of business, right now, without resorting to satellites. Approximately 300 MHz of prime spectrum is being ceded back to civilian use by the military. That spectrum, parts of which lie in the high desirable 300 MHz range,

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could be used to create a second FM band, or to create many new VHF television stations. It will not be used for that purpose, because the Commissioners have common sense, i.e., they recognize that the free TV and audio broadcast industries could not withstand such a proliferation of new stations.

6. The only difference between terrestrial broadcasting and satellite broadcasting is the platform from which the broadcasts originate. In the one instance, it is a tower, situated on land; in the other, a satellite orbiting in space. There is no other difference. The Commission should, therefore, apply the same common sense approach to satellite broadcast allocations that it applies to terrestrial allocations. There are obvious limits to the number of new stations that can be allocated, without destroying the existing system.

III. DMS licensees should operate as common carriers.

7. It costs approximately \$40,000,000 to launch a satellite. Bell does not have \$40,000,000. It does, however, have sufficient resources to lease a channel from a satellite owner, at market rates. If such a channel became available, Bell would, in fact, lease the channel and make its programming available, nationwide.

8. Historically, when an engineering project required the investment of huge amounts of capital, it has been the practice to require the owners of the project to serve everyone equally and fairly. In the late 1900's the building of railroads required enormous investments. The government responded by encouraging

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those investments, but regulated the railroads as common carriers and required them to serve all customers at the same rates and upon the same terms.

9. Similar regulations were applied to the electric and gas utilities and to the telegraph and telephone companies. There was a recognition that it was not practicable to have a dozen or more electric or gas companies serving one city, or a dozen or more telephone or telegraph companies. Therefore, the government created monopolies, but demanded, in return, fair and equitable treatment for all customers.

10. In the case of DARS, the FCC proposes to issue as many as four licenses. As a practical matter, however, few citizens will have the desire or the need to install more than one service in their home, office, or car. One service, offering 50 channels of music and 50 additional channels of voice-quality audio, should certainly suffice. Thus, the owners of that service, if they are permitted to control the programming, will control all of the ideas disseminated to their listeners. If the service decides to carry Rush Limbaugh and not to carry the speeches of President Clinton, listeners will get Limbaugh, not Clinton (and vice versa). Moreover, because of the high signal quality of DARS, and the convenience, there is little reason to believe that listeners will care to tune back to the conventional broadcast bands, AM or FM.

11. Furthermore, even if there are four competing DARS licensees, initially, it is quite likely that one licensee will

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soon come to dominate the market. Indeed, that licensee is likely to eventually purchase the systems of the other licensees, enabling it to control all audio broadcasting in the United States. Bell cannot believe that such a result is in the public interest.

13. That is why Bell urges that, if the FCC is determined to authorize direct audio broadcasting from satellites, the DARS licensees should be required to make their channels available for lease by independent programmers, such as Bell, and should not be permitted to either offer their own programming or control the programming broadcast from the satellites. Interestingly, if all of the 40 MHz which the FCC proposes to dedicate to DARS were awarded to just one licensee, there might well be enough channels available to allow almost every existing broadcast licensee in the U.S., to have at least one voice quality channel, provided, that is, that the channel could be leased.

IV. How Will DARS Be Supported?

13. As the NPRM points out, one proposed DARS licensee plans to use advertising to support its system, while the others propose to sell their services to subscribers. Bell wholeheartedly agrees with the NAB that, if DARS is to be made available to only three or four mammoth companies, they should be permitted to offer service only on a subscription basis, and they should not be permitted to sell advertising.

14. Already, free broadcasters face serious competitive threats from CATV systems which sell local advertising. Furthermore, broadcasters' audiences are threatened by competition

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from CD and tape players. There are not sufficient advertising revenues available to withstand competition for these revenues from an advertising supported national DARS system.

15. Bell points out, however, that requiring DARS licensees to serve as common carriers would ameliorate some of these problems, by opening the door to smaller, advertising-supported players, e.g., Bell, to obtain access to the satellite radio marketplace. For this to happen, however, the DARS licensees must not only be required to operate as common carriers; they must be forbidden from offering so-called "bulk rates". Otherwise, one large company could and would buy all of the available channels, at a discounted rate.

V. Should the FCC Hold an Auction?

16. The NPPM requests comments as to whether the FCC should auction the spectrum to be used for DARS. The FCC is to be congratulated upon the efficient manner in which it set up and completed the successful Personal Communications System (PCS) auctions, which raised some \$7 billion for the treasury. The monies from these auctions, however, did not come from a money tree. Most of the spectrum was purchased by telephone companies, and will be paid for by telephone customers, in the form of higher telephone bills. Since most telephone customers probably don't want to pay these higher rates, the auctions resulted in the imposition of a tax on telephone service. This is not necessarily a bad thing; it simply needs to be understood.

17. In the case of DARS, the monies raised by an auction

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would, of course, be paid, ultimately, by the subscribers to those services. To the extent that the DARS licenses are required to provide common carriage, any huge sums of money paid for spectrum at an auction could and would be passed on to prospective channel lessees (e.g., Bell) and might price smaller companies out of the market. If therefore, the FCC adopts Bell's suggestion that the DARS licenses be required to provide common carriage, Bell does not favor the auction approach.

18. As a practical matter, there are probably no more than four companies in the U.S., who have the financial wherewithal and willingness to launch satellites for DARS. Therefore, an auction is not needed. Construction permits could be issued for limited amounts of time (e.g., 6 months) and, if a satellite was not launched and made operational within that time, the permit could be forfeited, and someone else given an opportunity.

VI. The Principle of Diversity.

19. In closing, we return to a matter touched upon, earlier, i.e., the principle of diversity. For years, the FCC has followed a policy of maximizing the number of diverse voices for self expression, in the broadcast market place. In this proceeding, however, the FCC seems to have departed from that policy, in favor of a policy which would place hundreds of audio broadcast channels in the complete control of three or four mammoth organizations.

20. Bell Broadcasting Company believes that the former policy of maximizing the number of different voices for self

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expression is still the right policy, for a number of very sound reasons. One reason is that the development of a centrally controlled Digital Audio Radio Satellite Service would very likely destroy the current broadcast system, putting 300,000 people out of work. These people would find no replacement jobs in the centrally controlled system, because it would be operated with just a few hundred employees in some central location, e.g., New York City.

21. Economics aside, however, it is simply dangerous to concentrate so much control over the dissemination of ideas, in the hands of a few large organizations. There is no guarantee that they will allow or encourage the robust discussion and interchange of ideas, which the public interest requires. Therefore, Bell does not favor the approach advocated in this proceeding, but suggests an alternative approach, as set forth in these Comments.

Respectfully submitted,

September 13, 1995

BELL BROADCASTING COMPANY

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By:


Lauren A. Colby
Its Attorney

Exhibit D

Comments of Native American Public Broadcasting Consortium



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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August 21, 1995

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:

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Establishment of Rules and Policies)
for the Digital Audio Radio Satellite)
Service 2310-2360 MHZ Frequency Band)

IB Docket No. 95-91
GEN Docket No. 90-357
RM No. 8610

**COMMENTS OF
NATIVE AMERICAN PUBLIC BROADCASTING CONSORTIUM**

The Native American Public Broadcasting Consortium, Inc., of Lincoln, Nebraska, submits these comments on the above matter before the commission. The NAPBC is in business to encourage the production and dissemination of quality telecommunications programs for public broadcast and educational uses by both native American and general audiences.

NAPBC is a national program development, librarying and distribution agency that represents a membership of public radio stations serving rural reservation communities in the U.S. and Alaska.

NAPBC is currently developing a satellite interconnection system for the program sharing and exchange for these 20 native controlled stations. It is our intent to upgrade or install a station sites' digital audio programming and production capability.

Native American reservation communities are highly rural and isolated areas and do not have many choices in terms of using telecommunications services. The development of Digital Radio Services (DARS), would greatly enhance the diversity of media choices available to rural Americans, Particularly Native Americans.

DARS would also afford NAPBC the opportunity to choose from a more competitive marketplace for digital audio services for the American Indian on Radio Satellite, or AIROS Network.

Native American Public Broadcasting Consortium, Inc.
P.O. Box 88111
Lincoln, Nebraska 68501
(402) 472-3522
FAX (402) 472-8675

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NAPBC supports the rule making to license DARS as a service that can be affordable and accessible to rural communities. DARS will provide a wider coverage area for specialty programming that are relevant to rural community needs, which will satisfy consumer demand for higher fidelity and increase the number of program options for users such as AIROS, and is technically feasible with existing technology. DARS will also be subject to market forces in offering its programming options to service providers.

Therefore, NAPBC agrees with the proposed rule making and the FCC that DARS will provide new options for rural public interest benefits, that there is a demand for this new service for more programming choices with higher fidelity and that the FCC should move rapidly to establish DARS in order for these new services and benefits can be made available to the public as soon as possible.

RESPECTFULLY SUBMITTED,



Frank Blythe,
Executive Director, NAPBC

CERTIFICATE OF SERVICE

I, Chiquita K. Tanner, hereby certify that on this 27th day of October, 1995, a copy of the Request to File Additional Reply Comment and Additional Reply Comment was mailed U.S. Mail, First Class, postage prepaid to the following:

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